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Ключові слова: колективні угоди, колективні договори, укладання колективних договорів, угод, дія колективних договорів, угод, воєнний стан.

Key words: collective agreements, collective contracts, conclusion of collective agreements, contracts, the effect of collective agreements, contracts, martial law.

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THE EXPERIENCE OF THE MEMBER STATES OF THE EUROPEAN UNION IN THE USE OF MEDIATION IN THE ADMINISTRATIVE PROCEEDINGS

Support and development of freedom and security, guarantee of human rights and freedoms, ensuring the administration of fair justice are the priority tasks of a modern democratic society. In complex, but natural and extremely necessary processes of integration, international cooperation, there is a problem of effective interaction, the problem of overcoming various conflicts and disputes that arise at different levels. The universal and fundamental need of modern society within different legal systems is to ensure justice and consent. One of such practical areas of achieving reconciliation and agreement in resolving various conflicts (disputes) is the mediation procedure.

Mediation refers to the so-called alternative dispute resolution, abbreviated as ADR (Alternative Dispute Resolution). The concept of ADR was introduced into practice in the 70s of the twentieth century in the United

States and ten years later became widely used. Without mediators in the field of economy, politics, business in this country there is no serious negotiation process. There is a National Institute for Dispute Resolution, which develops new methods of mediation, and private and public mediation services. Great influence is the American Arbitration Association, which has approved its Rules of Arbitration and Mediation, which are used, including in the consideration of internal disputes. In the 90's the English term ADR practically became an international concept. In some countries, attempts have been made to replace it with certain counterparts, such as MARC (les modes alternatives de resolution des conflits) or RAD (reglement alternatif des differends) in France and Canadian Quebec, or AKR (aussergerichtlichen Konfliktregelung) in Germany.

Legislative regulation of the institution of mediation began in 1999. When deciding on the standards of the Council of Europe (CoE) and the European Union (EU) in the field of independence and efficiency of the judiciary, the first document that immediately comes to mind is the European Convention on Human Rights, in particular, Art. 6 of the Convention, which protects the right to a fair trial (Council of Europe, 1950). The Tampere European Council called on EU member states to introduce alternative out-of-court procedures, among which mediation has become one of the main methods. To this end, in 2008 the European Union adopted Directive 2008/52 / EU of the European Parliament and of the Council on certain aspects of mediation in civil and commercial matters, and a number of recommendations and guidelines. This Directive applies to international disputes, however, according to paragraph 8 of the Preamble, "nothing should prevent the application of these provisions also in internal mediation processes" (European Parliament, 2008).

In the legal space of European countries, mediation is increasingly used in resolving administrative and legal conflicts. The argument in favor of the use of mediation in administrative relations is expressed in Recommendation (2001) 9 of the Committee of Ministers of the Council of Europe to member states on alternatives to litigation between administrative authorities and parties of 5 September 2001, which emphasizes that court proceedings practices are not always suitable for the settlement of administrative disputes, and that the use of alternative means of settling administrative disputes makes it possible to resolve these problems and bring the administrative body closer to the public. In particular, attention is drawn to the fact that the main advantages of alternative means of resolving administrative disputes can be simple and flexible procedures, which, in turn, allows you to resolve disputes faster and more economically (Committee of Ministers of the Council of Europe, 2001).

This Recommendation stipulates the conditions for the application of the mediation procedure for the resolution of administrative disputes: it should be possible to settle administrative disputes by means other than judicial (in some cases); alternative means are not a way to evade the obligations or the rule of law by the parties to the dispute; alternative means of resolving administrative conflicts should in all cases involve judicial review, as it is a guarantee of protection of rights for the parties; alternative means

of resolving a legal conflict must ensure respect for the principles of equality and impartiality, as well as respect for the rights of the parties.

European law, in particular the European Convention on Human Rights, guarantees everyone the right of access to a court. And this right cannot be changed by transferring the case to mediation. It is also important to remember that mediation is not a panacea. It can only be an aid when the parties are ready and able to take part in mediation. In most cases, the courts will continue to resolve conflicts and make decisions. However, the judge usually looks to the past and decides what happened wrong in it, the mediator, on the contrary, encourages the participants to focus on the real future.

It should be noted that in the European Union, mediation is seen not only as a way to resolve disputes where conflicts have already arisen, but also as a way to prevent disputes (conflicts) in the future, which certainly expands the scope of mediation. Due to the fact that the procedural flexibility of the mediation procedure allows the use of mediation in different situations, there is no clear regulation of mediation methods. Legislation in almost all EU countries has deliberately abandoned attempts to regulate methods as such. The parties to the dispute, as well as mediators have the right to choose the most effective ways to resolve disputes in each case, setting precedents.

The transition of our country to market economic relations, the legal regulation of which is carried out on the basis of qualitatively new legislation to a greater extent opens wide opportunities for the use of non-state forms of conflict resolution, which will significantly relieve the state judicial system. These methods are considered as an alternative to state justice and are therefore called alternative forms of dispute resolution. In international practice, conciliation procedures have been used to resolve legal conflicts, such as: settlement of a dispute by the parties themselves through negotiations (negotiation); settlement of the dispute with the help of an independent mediator, which facilitates the parties to reach an agreement (mediation, conciliation); settlement of the dispute with the help of an intermediary-arbitrator, who in case of failure to reach an agreement is authorized to resolve the dispute by arbitration (med-art); dispute resolution with the participation of business leaders, their lawyers and a third independent person who presides over the hearing (mini-trial).

The basic idea of the development of justice (in particular, administrative) is the search for new methods and ways of resolving legal disputes, which includes the development of conciliation procedures as part of a more general process of optimizing the consideration and resolution of the case. The legal nature of conciliation procedures originates from the notion of judicial activity as a purely conciliation procedure, the purpose of which is to maintain balance and stability in society, the possibility of concluding an amicable agreement as a dispute settlement procedure.

Mediation can be seen as an additional and effective mechanism for protecting human rights and ensuring the rule of law and consent in society. Mediation can provide a speedy resolution of disputes at the lowest cost through processes tailored to the needs of the parties. In addition, the

agreements reached in the mediation process are more likely to be voluntarily adhered to, and friendly and lasting partnerships will be maintained between the parties. Such benefits are becoming increasingly apparent and effective in situations that are, *inter alia*, international in nature between entities.

Various approaches to the regulation of conciliation procedures in administrative proceedings have been created by world practice. However, the list of such procedures and the degree of formal and actual coercive measures may vary from country to country. There are countries with mandatory application of conciliation procedures before filing a lawsuit, countries whose legislation provides for voluntary parties to conciliation proceedings, as well as states that prefer indirect incentives for the parties to undergo pre-trial conciliation proceedings. However, all these approaches are united by one common pattern – the activity of the parties in the field of conciliation is approved and often regulated.

Despite some contradictions, the gradual introduction of the institution of mediation is not just possible, but a necessary measure that will promote the legal culture of the population, help unload the system of administrative courts of Ukraine and promote the peaceful settlement of public disputes. After all, mediation is one of the most common alternative ways of resolving disputes in foreign countries, which helps to relieve the judiciary from a significant number of cases that can be successfully considered by civilized methods, without recourse to the judiciary. The introduction of the institution of mediation in Ukraine at the legislative level is long overdue and necessary. The use of such means will only contribute to the full and comprehensive protection of the rights and interests of individuals and legal entities, including in relations of power and management. At the same time, the prospects for the introduction of such an alternative dispute resolution will help, first of all, to reduce the workload of administrative courts, as well as open the way for applicants to find the most favorable satisfaction of their claims.

The purpose of mediation is to reach an agreement, ie such agreements that will be acceptable to all parties to the dispute. Of course, the ideal is to find a solution that reflects and optimally reconciles their interests in the sense that each party gains something and loses nothing significantly. However, mediation does not always have to involve a detailed reconciliation of all the factual and legal circumstances of the case. The mediator does not conduct a formalized process, does not call witnesses and experts, and his goal is not to establish the truth – neither objective nor procedural. In fact, through mediation, people learn to talk to each other in a new way, listen and understand the other side. Mediation forms a sense of responsibility for one's own behavior and develops dialogue and activity. Thus forms the foundations of public communication and civil society.

Ключові слова: mediaція, адміністративна юстиція, медіатор, альтернативне вирішення спору, примирні процедури.

Key words: mediation, administrative justice, mediator, alternative dispute resolution, conciliation procedures.